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HOUSE BILL 601

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO HEALTH CARE; ENACTING THE PRIVATE ENFORCEMENT OF
LONG-TERM CARE PROTECTIONS ACT; PROVIDING FOR PRIVATE RIGHTS OF
ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Private Enforcement of Long-Term Care Protections Act".

Section 2. PURPOSE. -- The purpose of the Private
Enforcement of Long-Term Care Protections Act is to establish
the right of persons to enforce the statutes and rules
applicable to long-term care facilities by way of civil action
or injunctive relief.

Section 3. DEFINITIONS. -- As used in the Private
Enforcement of Long-Term Care Protections Act:

A. "injury" means physical harm, pain or mental

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2 B. "long-term care facility" means a residential
3 facility that provides care to one or more patients unrelated
4 to the owner or operator of the facility and includes:

- 5 (1) a skilled nursing facility;
- 6 (2) an intermediate care nursing facility,
7 including an intermediate care facility for the mentally
8 retarded;
- 9 (3) a nursing facility;
- 10 (4) an adult residential shelter care home;
- 11 (5) a boarding home;
- 12 (6) any other adult care home or adult
13 residential care facility;
- 14 (7) a continuing care community;
- 15 (8) a swing bed in an acute care facility or
16 extended care facility; and
- 17 (9) an adult daycare facility; and

18 C. "resident" means a patient, client or person
19 residing in and receiving care in a long-term care facility.

20 Section 4. PRIVATE RIGHT OF ACTION FOR DAMAGES. --

21 A. Any resident, as a class or otherwise, may bring
22 an action against a long-term care facility to recover actual
23 and punitive damages for injury resulting from a violation of a
24 federal or state statute or rule, including statutes or rules
25 that establish minimum standards or care required for the long-

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1 term care facility to obtain or retain its license to operate
2 or to receive medicaid or medicare payments.

3 B. An action brought pursuant to the provisions of
4 the Private Enforcement of Long-Term Care Protections Act, in
5 addition to seeking damages, may also seek to enforce the
6 violated federal or state statutes or rules through injunctive
7 relief.

8 C. If a resident or his representative is the
9 prevailing party in an action brought pursuant to the Private
10 Enforcement of Long-Term Care Protections Act, the court shall
11 award no less than one thousand (\$1,000) minimum compensatory
12 damages and shall award reasonable attorney fees and costs to
13 the prevailing resident.

14 D. If a resident is not able to bring a cause of
15 action personally due to death, incapacity or otherwise, his
16 guardian, legal representative, family member or the estate's
17 personal representative may maintain an action on his behalf.

18 E. The rights established in the Private
19 Enforcement of Long-Term Care Protections Act are in addition
20 to any other rights or remedies that may be available by
21 statute, rule or common law, including relief pursuant to the
22 provisions of the Unfair Practices Act.

23 Section 5. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 2003.